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9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF ELECTRONIC AND APPLIANCE REPAIR, HOME
10 **FURNISHINGS AND THERMAL INSULATION**
STATE OF CALIFORNIA

11
12 In the Matter of the Statement of Issues Against:

Case No. AN-2009-1630

13 **KHAMPHANH THEPHAVONG,**
14 **dba AMERITECH BUSINESS SYSTEMS**
1561 Coventry
15 **Fresno, California 93727**

STATEMENT OF ISSUES

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Rick Fong ("Complainant") brings this Statement of Issues solely in his official
20 capacity as the Acting Bureau Chief of the Bureau of Electronic and Appliance Repair, Home
21 Furnishings and Thermal Insulation ("Bureau"), Department of Consumer Affairs.

22 2. On or about April 12, 2010, the Bureau received an application for an electronic
23 service dealer registration from Khamphanh Thephavong ("Respondent"), doing business as
24 Ameritech Business Systems. Respondent certified under penalty of perjury to the truthfulness of
25 all statements, answers, and representations in the application. The Bureau denied the application
26 on April 16, 2010.

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STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 9831 provides, in pertinent part, that the director (Director of Consumer Affairs or "Director") shall refuse to issue the registration of a service dealer if the applicant has committed acts or crimes constituting grounds for denial of licensure under section 480 of that code.

4. Code section 480 states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made . . .

5. Code section 9841 states, in pertinent part:

(a) The director may deny, suspend, revoke, or place on probation the registration of a service dealer for any of the following acts or omissions done by himself or herself or any employee, partner, officer, or member of the service dealer and related to the conduct of his or her business:

....

(7) Conviction of a crime that has a substantial relationship to the qualifications, functions and duties of a registrant under this chapter, in which event the record of the conviction shall be conclusive evidence thereof.

....

(b) The director may also deny, or may suspend, revoke, or place on probation, the registration of a service dealer if the applicant or registrant, as the case may be, has committed acts or crimes constituting grounds for denial of licensure under Section 480 . . .

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6. Code section 9853 states, in pertinent part:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, and duties of a service dealer or service contractor is deemed to be a conviction within the meaning of this article. The director may suspend, revoke, or place on probation a registration, or may deny registration, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code, allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment . . .

7. Code section 22, subdivision (a), states:

“Board” as used in any provision of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.”

8. Code section 477, subdivision (b), states, in pertinent part, that a “license” includes “registration” and “certificate.”

FIRST CAUSE FOR DENIAL

(Criminal Conviction)

9. Respondent’s application is subject to denial pursuant to Code sections 9831, 9841 subdivisions (a)(7) and (b), and 480 subdivisions (a)(1) and (a)(3)(A), in that Respondent was convicted of crimes, as set forth in subparagraphs (a) and (b) below, which are substantially related to the qualifications, functions and duties of a service contractor.

a. On or about December 14, 1992 in the criminal proceeding titled *People v. Khamphanh Thepphavong* (Super Ct. Fresno County, 1992, Case No. 476172-2), Respondent pled guilty to violating Vehicle Code section 10851 subdivision (a) (unlawful driving or taking of a vehicle without the owner’s consent, a felony) and Penal Code section 459 (second degree burglary, a felony). On January 13, 1993, Respondent was sentenced to serve 2 years in Wasco State Prison. The circumstances of the crime were as follows: On or about November 25, 1992, Respondent willfully and unlawfully entered a locked 1986 Honda Prelude belonging to S.V., with the intent to commit larceny and drove or took the vehicle without S.V.’s consent.

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b. On or about January 4, 1993 in the criminal proceeding titled *People v. Khamphanh Thepphavong* (Super Ct. Fresno County, 1993, Case No. 477452-7), Respondent pled guilty to violating Penal Code sections 211 and 212.5 subdivision (b) first degree robbery/robbery of any person while using an automated teller machine, a felony) with an enhancement by virtue of Penal Code section 12022.5 subdivision (a). On January 11, 1993 Respondent was sentenced to serve 6 years in Wasco State Prison concurrent with the sentence in Case No. 476172-2 above. The circumstances of the crime are as follows: On or about November 23, 1992, Respondent willfully, unlawfully and by means of force and fear, took personal property from G.G. Further, Respondent personally used a firearm in the commission of the crime.

SECOND CAUSE FOR DENIAL

(Dishonesty, fraud or Deceit)


10. Respondent's application is subject to denial pursuant to Code section 480 subdivision (a)(2) in that he committed acts involving dishonesty, fraud or deceit with the intent to substantially benefit himself or substantially injure another, as set forth in paragraph 9, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Denying the application of Khamphanh Thephavong, doing business as Ameritech Business Systems for an electronic service dealer registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 1-4-11


RICK FONG
Acting Bureau Chief
Bureau of Electronic and Appliance Repair, Home
Furnishings and Thermal Insulation
Department of Consumer Affairs
State of California
Complainant

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